

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

ALICIA DAVENPORT, *
Plaintiff, *
vs. * CASE NO. 4:06-CV-150 (CDL)
CITY OF COLUMBUS, GEORGIA, et *
al., *
Defendants. *

O R D E R

Defendants filed a Motion for Reconsideration of the Court's summary judgment order in this case. The Motion for Reconsideration (Doc. 105) is denied.

Defendants also filed a Motion for Leave to File Interlocutory Appeal under 28 U.S.C. § 1292(b), advising the Court that they plan to take an interlocutory appeal of certain issues under 28 U.S.C. § 1291, presumably the Court's denial of qualified immunity as to Defendants Boren, Horiuchi, Spear and Walton. The Motion for Leave to File Interlocutory Appeal (Doc. 107) is denied.

The Court notes that it found genuine issues of material fact as to whether Defendants Boren, Horiuchi, Spear and Walton committed acts which, if they occurred, would violate clearly established law. Defendants' present challenge appears to be simply a means to lead the appellate court to review the underlying factual matter. Such a challenge to the evidentiary sufficiency of a qualified immunity

determination may not be made via interlocutory appeal. See *Johnson v. Jones*, 515 U.S. 304, 319-20 (1995). Accordingly, any attempt by Defendants to file an interlocutory appeal of the Court's rulings at this time would appear to be without legal justification. The Court notes that this case has been pending since December 29, 2006. The parties sought and the Court previously granted a five-month extension of discovery. This case is now ready for trial. It is the Court's intention to try this case during its upcoming trial term notwithstanding the filing of any notice of interlocutory appeal by Defendants, unless clear legal authority is presented to the Court convincing it that it does not possess the jurisdiction to do so.

IT IS SO ORDERED, this 4th day of August, 2008.

S/Clay D. Land
CLAY D. LAND
UNITED STATES DISTRICT JUDGE